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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 298

S. M. NICKEY, ET AL.,

VS.

STATE OF MISSISSIPPI, EX REL, GREEK L. RICE, Attorney General.

STATEMENT OF FACTS AND BRIEF FOR APPELLEE.

STATEMENT.

OFFICIAL REPORT 145 So. 630.

This is an attachment in chancery by the Attorney General to subject certain property, owned by nonresident defendants, to the payment of delinquent taxes, state, county, levee and drainage, for the year 1928, the property attached being situated in Tunica County, Mississippi.

Defendants owned large timbered tracts of land in Tunica County and were cutting and removing the timber from said lands and failed and neglected to pay the ad valorem taxes that were lawfully assessed against the real estate, and permitting the lands, after denuding the same

of the timber, to sell for its taxes, it being alleged that the denuded land would not bring the taxes at a tax sale.

To avoid the loss of this revenue to the state, county, and taxing districts of the county, a bill was filed and an attachment was issued seizing certain other property of the defendant, which property was released upon defendant's executing a bond as required by law.

The defendants filed an answer to said bill in due course, and appeared in court and a trial was had, both sides introducing evidence to sustain their respective positions.

The Supreme Court of Mississippi held in the case of *Nickey v. State*, 145 So. 630, that the drainage taxes sought to be collected by this bill were not a debt under the laws of the State of Mississippi, and also held that the printers' fees, and sheriffs' fees were not collectible in this action, but it held that the Attorney General was authorized by law to bring this suit for the collection of the taxes involved in this proceeding, except the drainage taxes, and sheriffs' and printers' fees, and affirmed the decision of the lower court as to all taxes except the drainage taxes sought to be recovered in this suit, and no cross appeal having been prosecuted from this decision, the only question now before the court is the validity of the judgment of the state court for the collection of the ad valorem taxes.

BRIEF.

As we understand the case presented to this court the only questions involved are: (1) Whether or not the as-

sessments were duly and legally made in the manner provided by law; (2) Whether or not the Attorney General, as chief law officer, under his common law and statutory powers, had a right to institute this suit for the recovery of the ad valorem taxes involved; (3) Whether or not the due process of law clause of the Federal Constitution has been violated; and (4) Whether or not the State, in the collection of taxes, is confined to a recovery out of the property assessed, or whether it may proceed against other property to protect its rights.

The statute pertaining to the assessment of lands material to the determination of the issues herein involved, are the following: Sections 3132, 3145, 3146, 3147, 3148, 3149, 3151, 3161, 3162, 3164, 3165, 3166, 3167, 3172, 3173, 3177, 3178, 3179, Code of Miss. 1930, which scetions are substantially the same as the assessment statutes of Hemingway's Code, 1917 and are as follows:

SECTION 3132:

> "The tax assessor shall call upon each person liable to taxation in his county for a list of his taxable personal property, either in person, or by leaving a copy of the prescribed tax list at his usual place of residence or business, and it shall be the duty of each person to make out and deliver to the tax assessor, upon demand, and if not demanded, not later than the first day of April in each year, a true list of his taxable property with the value of each article, specifying all such property of which he was possessed on the next preceding tax lien date in his own right or in the right of his wife or minor child, or as executor,

administrator, guardian, trustee, agent, or otherwise, rendering separate lists of the property of each. The taxpayer shall fill in all blanks on the tax lists and show in the proper place all taxable personal property owned by him or by any person for whom he is required to give in taxable property. Such list shall show where the property was situated on the next preceding tax lien date and he shall render separate lists for personal property where located in a school district, or a road district, and the list, or lists, required to be rendered by every person shall show clearly the taxing district or municipality in which the property was subject to taxation on the tax lien date next preceding. Each list shall be verified by oath which the assessor, or his deputy, is authorized and required to administer, to each person, as follows

" 'You do solemnly swear (or affirm) that the list of property you have made for purposes of taxation is a just and true account of all property you are required to render subject to taxation in your own right, or that of any other person for whom you ought to give in taxable property, and that each statement of fact is true and correct as stated, and that no property subject to taxation has been omitted and all property has been listed at its intrinsic taxable value so help you God.' If any person fails to furnish the assessor with a list of property as required by this section, or if the assessor finds or obtains information of property owned by a non-resident or someone unknown to the assessor, such property shall be assessed and valued by the assessor at the highest value at which similar property is assessed and valued;

and where the owner is unknown to the tax assessor the property shall be assessed to the person having the same in charge."

SECTION 3145:

"It shall be the duty of the tax assessor to assess all the lands in his county and he shall require the owner, agent, or person having possession, or charge, of any lands, to render a list of all lands owned, or in charge, or in possession, of such owner, agent, or person, and lands shall be assessed according to its true value, taking into consideration the improvements and timber thereon, the proximity to navigation, to a railroad, to a city, town, village, or road, and any other circumstances that tends to enhance its value, and not at what it might bring at a forced sale, but what the owner would be willing to accept and would expect to receive for it if he were disposed to sell it to another able and willing to buy. Every person owning or being in possession, or in charge, of any land shall deliver to the tax assessor on demand and not later than April first in each year in which land is assessed, a list of all lands owned by, or in possession, or charge, made out on the tax lists prescribed; and showing the total number of acres (except the land be platted by blocks and lots), the total number of acres of cultivatable lands, and the value thereof, the total number of acres of timbered lands and the value of the land, and the number of thousand feet of timber thereon and its value, and the number of acres of uncultivatable land and the value thereof; and buildings or improvements subject to taxation on any lands returned for assessment. If the lands be surveyed and platted it shall be re-

turned so as to clearly identify it by the recorded plat thereof, and the list rendered shall disclose the value of each lot and the value of any buildings, structures, or improvements thereon. Any person required by this section to render a list of any lands shall show in what road district, school district, levee district, municipality, or other taxing district the same is located. If any person shall deliver or disclose to an assessor, or deputy assessor, a list, statement, or return in regard to his land which, in the opinion of the assessor, or deputy assessor is false or fraudulent, or contains any understatement or undervaluation, or fails to show the proper classification of lands or fails to show timber, buildings and improvements, or other elements of value, the assessor shall make an assessment of the land with the proper classification thereof including the omitted things, at a valuation equal to the highest value at which like lands similarly situated are assessed. Lands not given in by any person shall be assessed in the same manner by the assessor at a valuation equal to the assessment of other like lands similarly situated and all timber, buildings, and improvements, or other elements of value shall in all cases be separately valued and assessed."

3146. *Buildings, Minerals, etc., Separately owned.*—Whenever any buildings, improvements or structures, mineral, gas, coal, oil, timber or similar interests in real estate, including building permits or reservations, are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, or when any person reserves any right or interest, or has any leasehold in the elements above

enumerated, all of such interests shall be assessed and taxed separately from such surface rights and interests in said real estate, and shall be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes. All interests in real estate herein enumerated shall be returned to the tax assessor within the same time and in the same manner as the owners of lands are now required by law to list lands for assessment and taxation and under like penalties. The tax assessor shall enter the assessment of the interests herein enumerated upon the assessment roll by entering the same upon the next succeeding line or lines of the roll following the assessment of the surface owner, the name of the owner and the name of the interest, and by placing the value in the appropriate column or columns on the roll. And the value of said interest or interests shall be determined and fixed in the same manner and by the same officials now required by law to value and assess property for taxation.

3147. *How lands not rendered assessed—All lands to be accounted for.*—It shall be the duty of the tax assessor in each county to assess the lands in the county. Lands not rendered, or returned shall be assessed by him as provided in the previous section; and it shall be the duty of the board of supervisors to furnish the tax assessor with all necessary maps, or plats, of the county, and of every portion thereof, including municipalities, and every survey, subdivision or addition thereto, and of every school district, road district or other separate taxing districts. Such maps or plats shall be uniform in size, drawn to scale, and shall show clearly the location of all tracts of

lands in the county and every portion thereof, and shall show the boundaries of every supervisor's district, road district, school district, or other taxing district, and of every municipality, and of every survey, subdivision, or addition, and of all separate, adjacent, annexed territory, added to any separate school district, and he shall compare his rolls with such maps and see that the whole of his county is assessed.

SECTION 3148:

"In making his land roll the assessor shall commence the assesment with the lowest number of range and township in his county, and with the northeast corner of each township, and shall proceed numerically, with all the sections, townships, and ranges in his county, first setting down all the subdivisions of each section, if they belong to different individuals, or the whole section together, if owned by one person, and not divided on account of parcels being of different values; and if more than one person shall claim to be the owner of the same tract or parcel of land the assessor shall so state in his assessment roll, and the tax collector shall only collect the taxes on one assessment. Land of the state or of the United States, and other land exempt from taxation, shall be listed as other lands, but without the value, except as otherwise provided. And if the owner of any lands be unknown it shall be assessed to 'unknown.' Lands not surveyed according to the plan of the government surveys, shall be assessed by the designation used on the government maps, or by other description or names by which they may be distinguished; and if parts of such lands shall be owned by different persons, such part

shall be referred to by quantity, and such short memorandum as may be convenient to show the locality. In assessing lands situated in any city town, or village, the assessor shall proceed according to the plat or plan thereof, commencing with the lowest number of square or block and lot, or other subdivision, and proceding numerically with all the lots in a square or block, and all the squares in the city, town or village until complete.

"Lands assessed by the state tax commission shall be listed, buth without value, on the rolls by the assessor for the purpose of completing the description of all lands in the county, but for no other purpose.

"The assessor shall show in separate columns on his roll in what road district, school district, or other separate taxing districts each parcel of land is located and subject to taxation, and where a parcel of land owned by one person lies partly within and partly without any taxing district the assessment shall be divided and separately assessed so as to show the number of acres and the classification of the land in each separate district with the value thereof. Where a taxpayer renders a list of his lands and fails to show in what taxing districts, or municipality the same is located and subject to taxation, the tax assessor shall enter the assessment in separate columns so as to show the assessment for the respective districts or municipality. He shall show the total of each and every column on his roll and carry the result thereof to the recapitulation; and he shall extend into the column for 'Total' the amount of each separate assessment; and shall show in his recapitulation the total assessment of every taxing district, or municipality in his county."

SECTION 3149:

"A failure to observe the requirements of the last preceding section shall not vitiate any assessment, if the land be so described as to be identified; and it shall be sufficient identification of land to describe it as the land of ..... (the person owning or claiming it), occupied by ..... ; or that part of (section or other known division designating it) owned or claimed by ..... ; or the lot on which ..... resides; or the lot occupied by ..... ; or by the name by which it may be known; or by any description which will furnish a sure guide for the ascertainment by parol evidence of the particular land intended."

3151. *Description of land.*—In assessing land, a description of it as a part of a designated tract or division, shall be held to embrace such part as is the subject of separate ownership, as one tract or division, whether owned by one or several jointly; and when part of a designated tract or division shall be sold for taxes, the sale shall pass the title of such part as was the subject of such separate ownership when it was assessed; and the sale of a specified number of acres of a tract containing more, or a specified portion of a tract, shall pass an undivided interest in the whole tract equal to the proportion which the number of acres or portion sold bears to the whole tract; and when part of a known tract or division of land is assessed by a description which identifies it, any other part of it which is assessed but not so identified, shall be held to embrace all of such tract or division not included in the part identified; and parol testimony shall always be

admissible to apply a description of land on the assessment roll, or in a conveyance for taxes, where such testimony will show what land was assessed and sold, and there is enough in the description on the roll or conveyance to be applied to a particular tract of land by the aid of such testimony.

3161. *When assessment rolls filed—board may extend time.*—The assessor shall complete the assessment of both real and personal property and file the roll or rolls with the clerk of the board of supervisors on or before the first Monday in July of each year. He shall make an affidavit and append it to each roll, showing that he has faithfully endeavored to ascertain and assess all the persons and property in his county; that he has not omitted any person or thing, or placed upon, or accepted an undervaluation of any property, through fear, favor, or partiality, and that he has required every taxpayer to make the oath required to be taken by the person rendering a list of his taxable property wherever possible; and the assessor shall file with the roll, or rolls, under oath, a list showing the name of every taxpayer who has failed or refused to make oath to his tax lists. If the assessor fails to file his roll, or rolls, on or before the first Monday in July of each year the board of supervisors at its July meeting shall adopt an order showing the failure of the assessor to file his roll, or rolls, and shall certify to the state tax commission a statement showing such failure and the time necessary for the assessor to complete his roll, or rolls. Upon receipt of such certificate from the board of supervisors of any county, the state tax commission shall, by order entered on its minutes, provide when such roll shall be

completed and filed, the date when the board of supervisors shall meet to equalize the roll, or rolls, and the time when objections to the assessments contained in such roll, or rolls, shall be heard by the board of supervisors, provided that not less than ten days notice shall be given prior to the hearing of such objections. When such roll, or rolls, shall be filed they shall be dealt with in all respects as now provided by law except as to the time.

SECTION 3162:

"The board of supervisors shall immediately at the July meeting proceed to equalize such rolls and shall complete such equalization at least ten days before the August meeting, and shall immediately by newspaper publication notify the public that such rolls so equalized are ready for inspection and examination. In counties having two judicial districts the board shall by order designate on what days during August it will begin in each of the two districts upon its hearing of objections, and these days shall be named in the said notice, and the board shall be authorized to hold its sessions in the two districts respectively as designated in the order aforesaid. The foregoing provision with reference to counties with two judicial districts shall apply to any subsequent meetings where of notice to taxpayers is necessary, to be given."

3164. *What to be done.*—At the meeting for the equilization of assessments, the board of supervisors shall carefully examine the roll or rolls, and shall then and there cause to be assessed any person or thing that may be found to be omitted,

and anything found to be undervalued may be correctly valued. And in the year in which the land assessment is made the board shall carefully examine the land roll and see that it embraces all the land in the county, and correctly represents it as being the property of individuals or the state or United States, according to the fact, and taxable or not taxable according to law, and that all is correctly described so as to be identified with certainty, and that there are no double assessments; and all land improperly omitted from the roll shall be added thereto by the board or under its direction, and land incorrectly or insufficiently described shall be properly described, and land which is not classed correctly or undervalued shall be properly classfied and valued. And the board shall cause all corrections to be made in the rolls, which, being done, the board shall enter an order approving the assessments, with or without corrections, as the case may be, subject to the right of parties in interest to be heard on objections as hereafter provided.

3165. *Objections to Roll—Supervisors to hear—When and how.* The board of supervisors of each county shall hold a meeting at the courthouse, or at the chancery clerk's office in counties where the chancery clerk's office is in a building separate from the court house, on the first Monday of August, to hear objections to the assessment and to examine the same. The assessor shall attend the meeting, and the board shall examine the assessment rolls, and hear and determine all exceptions thereto, and shall sit from day to day until the same shall have been disposed of,

and all proper corrections made; and the board shall equalize the assessment and may increase or diminish the valuation of any property, so that property of the same value shall be assessed for an equal sum. And where an individual assessment has been increased immediate notice in writing shall be sent by mail to the person whose assessment is increased by the clerk of the board of supervisors and at said meting the board shall have the power to change erroneous assessments or to add omitted property but any person affected by such action shall have notice as next above provided; and if the board adjourn before considering the objection filed, such objections shall be heard at the nex tregular meeting of the board."

3166. *Objections must be filed or assessments to stand.*—A person who is dissatisfied with the assessment may, at such August meeting, present objections thereto in writing which shall be filed by the clerk and docketed and preserved with the roll. All persons who fail to file objections shall be concluded by the assessment and precluded from questioning its validity after its final approval by the board of supervisors or by operation of law, except minors and persons non compos mentis.

SECTION 3167:

"If from any cause the meeting of the board of supervisors at which objections to assessments should be heard, be not held, then all such objections shall be continued and may be heard at the next meeting of the board, either regular, adjourned, or special; and if the board fails to give the proper notice to the taxpayers of the meeting

at which objections are to be heard the board shall immediately proceed to give such notice and shall fix the time when it will hear and determine all objections to the assessments therein contained, and the board shall proceed and deal with the roll, or rolls, with all the powers and duties as are now provided by law, except as to the time. If the board fails to hold any meting, or give any notice, or to perform any other duty in reference to the assessment roll, or rolls, at the time required by law, such duty shall be performed at a later date upon the giving of proper notice to persons affected."

3172. *How assessment approved.*—Assessments must be approved by an order of the board of supervisors entered on the minutes; but the failure to make and enter such order shall not vitiate the assessment if it shall appear that the assessment was made according to law.

3173. *Validity of assessment not affected, etc.*—The failure of the assessor to certify and swear to his assessment roll, or to return it on the day named for its return, shall not affect the validity of the assessment if approved by the board of supervisors.

3177. *Tax Commission to notify board of supervisors, action on rolls.*—When the tax commission has completed its examination of the recapitulations, and within thirty days after the receipt of recapitulations from three-fourths of the counties of the state, it shall, by orders spread upon its minutes, direct what percentage shall be added to or taken from the assessments of any one

or more classes of property on the respective roll or rolls of the counties from which recapitulations have been received, in order to bring about equality and uniformity of the assessments of property throughout the state; and that all property in general shall be assessed as nearly as possible at true value; or if the commission finds that the assessment of any county or counties is reasonably equal and uniform with the assessment of other counties, and in proportion to the true value of the property and does not require an increase or decrease in the assessment of any class of property, in order to secure such equality and uniformity, the commission, shall, by order spread upon its minutes, approve the said assessment roll or rolls, and direct the board of supervisors thereof, to have copies of the said rolls made as required by law. Like orders shall be adopted by the commission with respect to the recapitulations of all the remaining counties as they are received by the commission. The commission shall require its secretary to send by United States mail to the president of the board of supervisors a certified copy of the order adopted with reference to the recapitulation of assessment rolls of the respective counties, instructing and directing the respective boards of supervisors as to what percentage shall be added to or taken from the assessments of the various classes of property on the roll or rolls of the said counties! or if no change be ordered, a copy of the order accepting the rolls; and directing that copies be made.

3178. *Duty of Board of Supervisors to make changes as directed.*—When the president of the board of supervisors shall receive the copy of the

instructions from the state tax commission he shall immediately call a meeting of the board of supervisors of his county and shall give notice thereof by publication, five days before the date of the meeting and shall set forth in said notice the purpose of the meeting specifying the class, or classes, of property to be increased or decreased in accordance with the order of the state tax commission and notifying all taxpayers owning property effected by the order of the state tax commission that at the said meeting the board of supervisors will carry out the orders of the commission and that any taxpayer aggrieved by the action of the board may present objections to any increase in the assessment of his property. When the board of supervisors convenes pursuant to the said call and notice of the president it shall proceed to consider the instructions of the state tax commission and if the board be dissatisfied with the changes and corrections ordered to be made by the state tax commission the board may, by order, direct the president of the board of supervisors to appoint not exceeding five witnesses to appear before the state tax commission and to testify, under oath, with reference to the orders of the said tax commission directing changes or corrections in the rolls of their county; and the members of the board, its attorney, tax assessor and chancery clerk may appear before the commission and give evidence with reference to the said assessment; and in its aforesaid order the board may fix a day for its meeting for the further performance of its duties required under this section. The said witnesses shall appear before the state tax commission in its office at Jackson within thirty days after the mailing of the

copy of instructions to the president of the board of supervisors, or they shall lose their right to be heard. The compensation and expenses, if any, shall be paid by the board of supervisors of the county affected. The state tax commission shall hear the complaints and objections of any board of supervisors and witnesses appointed as herein provided and may adopt an order modifying or rescinding its former order directing an increase or decrease in the assessment of any class, or classes, of property. The decision of the state tax commission when made shall be final and it shall be the duty of the board of supervisors to immediately revise and correct the assessment of the classes of property affected by the order, in accordance with the instructions of the commission. In carrying out the orders of the state tax commission the board of supervisors shall, first, correct any errors in their former equalization and may add to the roll any person or property found to be omitted and then shall apply the percentage of increase or decrease as ordered by the state tax commission to the respective class or classes of property; but the board shall not apply an increase to the assessment of all taxpayers owning any class of property affected by the order of the tax commission until it has first corrected all errors in its former equalization to the end that no particular parcel of property within a class shall be raised above its actual value when the required percentage of increase is applied to that class. The revised and corrected property valuations thus made shall be the fixed and legal valuation of the property for the payment of taxes, and it shall be the duty of each and every taxpayer to pay his taxes thereon accordingly.

SECTION 3179:

"Any taxpayer who feels aggrieved at the action of the board of supervisors in equalizing his assessments shall have the right of appeal to the circuit court in the manner provided by law, within ten days after the adjournment of the meeting of the board of supervisors, at which the approval of the roll by the state tax commission is entered."

This suit was instituted under the provisions of Sec. 6887, Hemingway's Code of Mississippi, 1917, which is the same as Sec. 3122 Code of Mississippi 1930, to collect taxes assessed by virtue of the provisions of the above numbered sections.

In the case of *Virden v. Bowers*, 51 Miss. 1, the rule is laid down that a legal assessment constitutes the owner of the property debtor to the State, and that a delivery of the assessment roll to the collector authorizes him to receive the money as therein charged, and further states that "the assessment roll, or a copy placed in the hands of the Sheriff is like an execution, and arms him with power to enforce the collection of the money, if default is made in the payment."

This case was decided in 1877 and defines a tax as a debt, and the rule therein announced has been followed by an unbroken line of decisions to the present date.

In the recent case of *Grenada Bank v. Town of Moorhead*, 133 So. 666, the court said:

"It is not open to dispute that the assessment for taxes is a judgment rendered for money to be paid, as well as fixing a lien on the property."

Almost since the creation of the State, it has been the law that a tax legally assessed was a debt, not by contract but by law, and the purchaser or owner of real estate in Mississippi acquires or holds same with due notice that all taxes legally assessed against said property becomes a debt against the owner, recoverable in an action at law.

As said in the case of *Winter v. Montgomery*, 79 Ala. 481;

"A tax roll is not a judgment roll, and a tax thereon does not partake of the nature of a judgment, except as to its validity and amount and the manner in which it can be proven. The authority for the tax and its binding effect upon the person taxed rests upon the authority given to the taxing officer by the legislature. When the taxing officers have jurisdiction, their action cannot be attacked collaterally, and to that extent the tax is in the nature of a judgment. The tax, however, does not become a debt within the meaning of such word as commonly used. Taxes do not rest upon contract, express or implied. They are obligations imposed upon citizens to pay the expense of government. They are forced contributions, and in no way depend upon the will or contract, express or implied, of the person taxed."

It is said by Cooley in his work on taxation 3rd edition, volume 1, page 19:

> "The assessment of the tax, although it may definitely and conclusively establish a debt for the purpose of statutory collection does not constitute a technical judgment, and the taxes are not contracts between party and party, either expressed or implied, but they are the posistive acts of the government, through its various agents, binding upon the inhabitants, and to the making and enforcing of which their personal consent individually is not required."

Therefore, under this rule, while the amount of the tax is definitely fixed and a lien imposed, the tax cannot be collected, except by the sale of the property, until the owner is brought into court and judgment obtained by due process of law, and in this particular case, as found from the facts of the Chancellor and affirmed by the Supreme Court of Mississippi, the tax was duly and legally assessed and the amount fixed, and by this proceeding defendants were brought into court by writ of attachment and given every opportunity for a hearing and contest of the demands made by appellee's complaint in the court below, of which opportunity they availed themselves by entering their appearance, filing a general answer denying all the allegations of the bill and introducing evidence in support of their contentions, and were, thereby afforded due process under the Constitution of the United States and of the State of Mississippi.

In bringing this action, appellee was guided by the opinion in the case of *Mexican Central Railway Company v. Pinkney*, 149 U. S. 194, 37 L. Ed. 699, in which the court said:

"A judgment without personal service against a non-resident is only good so far as it affects the property which is taken or brought under the court or other jurisdiction in ordinary action to enforce a personal liability, and no jurisdiction thereby acquired over the person of a non-resident further than respects the property so taken. This is as true as in the case of an assessment against a non-resident, of such a nature of this one, as in the case of a more formal judgment."

We especially call the court's attention to the case of *Wells Fargo & Company v. Nevada*, 63 L. Ed. 190, 248 U. S. 165, in which the court said:

"There is no want of due process of law in a tax assessment because the assessment was made without notice to the taxpayer, or without an opportunity to be heard, where the mode of enforcing the tax is by a judicial proceeding wherein process issues, an opportunity is afforded for a full hearing, and only after there is a judgment sustaining the tax is payment enforced.

"It is no longer an open question in this State that if a party against whose property assessment has been made, shall at any time in the course of proceeding before a conclusive judgment be afforded by law an opportunity to contest its correctness, he is afforded due process of law."

To the same effect is *Gallop v. Smith*, 183 U. S. 300, 46 L. Ed. 207, and authorities cited therein.

In the present case, under the statutes, defendants had notice of the time of approving the assessment roll, due

notice was given of the filing of the roll as required by law, and an opportunity given to all taxpayers to protest; and in addition there to, they were brought into court in this proceeding and again given an opportunity to contest the legality of the assessment and the amount thereof, and the records in this case demonstrate that they took advantage of this opportunity and contested every point in issue, and certainly they cannot now claim that they have not been afforded due process of law, or had the advantage of all the rights guaranteed to them under the Constitution of the United States, or the State of Mississippi.

The case of *Dewey v. City of Des Moines*, 43 L. Ed. U. S. 665, was strongly relied upon by appellants in the State Courts to sustain their contention, but, in our opinion, this case supports the contention of appellee. In the Dewey case, the court said:

> "A judgment without personal service against a non-resident is only good so far as it affects the property which is taken or brought under the control of the court or other tribunal in ordinary action to enforce a personal liability."

And we concede that in the present case, that but for the appearance of defendants no judgment should have been entered against them other than to the extent of the value of the property brought before the court, or so much thereof as might have been necessary to satisfy the tax. Are the taxes in question a debt recoverable by action?

This question is answered by section 6887 of Hemingway's Code of 1917, this section being in force at the time

of the suing out of the attachment in this case, said section being as follows:

> "Taxes a Debt Recoverable by Action.—Every lawful tax levied or imposed by the State, or by a County, city, town, village, or levee board, is a debt due by the person or corporation owning the property, or doing the business upon which the tax is levied or imposed, whether assessed or properly assessed or not, and may be recovered by action; and in all actions for the recovery of taxes the assessment roll shall only be prima facie correct."

Under the law existing at the time the debt herein was incurred or accrued, all ad valorem taxes of the State of Mississippi accrued and became a debt and were a lein upon the property from and after the first day of February of each year, and defendants herein became liable for the debt upon which this action is based from the first day of February, 1928, even though the assessments were not made until a later date, and being a debt under the statute it could be collected in any way that any other debt was collectible.

As was said in the case of *Powell v. McKee*, Tax Collector, 81 Miss. 229:

> "By section 3747 a tax upon personal property is made a debt due by the person owning the property, when assessed, whether properly assessed or not, and this is entirely in harmony with the preceding section, which makes a tax a charge upon a thing taxable, whether rightfully or wrongfully assessed, and taking both sections to-

gether, it is, we thing, a necessary conclusion that personal property may be rightfully assessed to an unknown owner.—The taxes are due from the property itself,, as well as constituting a debt from the owner; and if the latter secretes himself, it is but just that the former adjust the demand."

In the case of *Delta Pine Land Company v. Adams* 93 Miss. 340, 48 So. 190, the court said:

"The manifest purpose of the legislature in enacting section 4256 was to provide an individual remedy, and to create a new right by which the essential nature of the obligation for taxes as taxes should be changed from the nature such obligation had as taxes alone to the nature or quality they would have as debts, and thus give to the sovereignty a better right, and an additional and more effective remedy for the collection of taxes."

It is further held in the above case that section 4256 of the Code of 1906 does not confine the remedy to courts of law.

In the case of *Railroad Company v. Adams* 78 Miss. 895, the court said:

"Section 3747, Code of 1892, does not change the law declaring the tax a debt. It is a debt by virtue of the legislative declaration and not a debt arising by contract. The effect of section 3747, supra, is to make the owner liable in personam, for the whole of his taxes collectible as provided by section 3826 of the Code of 1892."

The case of *McLain, Receiver of Taxes, v. Myers*, decided by the Court of Appeals of New York, 2nd Division, on October 1, 1892, and reported in 32 N. E., page 63, was a suit for taxes based upon the following statute:

> "Any tax duly imposed for personal property upon any person or corporation in the city and County of New York, and which shall remain unpaid and in arrears on the 15th day of January succeeding the year in which it shall have been imposed may be recovered, with interest and costs, by the receiver of taxes of said city in an action in any court of record in the State."

It was contended by the defendant in that case that said section conferred no right upon the receiver to institute suit against a non-resident of the city and County of New York, but the court said:

> "We think, however, that the phrase, 'any tax duly imposed' refers to the place where the tax was laid, rather than to the residence of the person upon whom it was laid, and that the section should be construed so as to read 'any tax duly imposed in the city and County of New York upon a person or corporation.'"

> "It is natural that the remedy thus provided should be limited to the taxes imposed in the particular locality affected by the statute, and the language used is appropriate to that object but not to the limitation depending upon the residence of the person taxed, because nothing is said upon that subject. No word is used that suggests residence, and we are not at liberty to insert one. The use of the general term 'any tax' and 'any person'

indicates an intention to include everyone taxable upon personal property in the city of New York under any statute. ——————— There is greater need of the remedy in the case of non-residents, because absence from the city makes the enforcement of the tax more difficult. We think that the language used confers a general right of action in personam to collect taxes imposed for personal property, and that, if the legislature had intended to except a single class from the operation of the section, it would have done so in express terms."

It was contended by appellants in the State Courts that, inasmuch as the lands upon which the taxes in this case were levied were not sold by the Sheriff, that they were discriminated against and that under our statutes, the sale of the property is the exclusive remedy, but such does not seem to be the general rule. In the following cases it is held that a remedy created by statute for the collection of taxes is not exclusive of all others, unless the statute expressly makes the remedy exclusive. It is held that a tax is collectible by a common law action in the absence of any statute, and that the legislature is presumed to have intended to provide a remedy in addition to those already existing.

——— *"Delta & Pine Land Co, v. Adams* 93 Miss. 340, 48 So. 190, *Nickey v. State,* 145 So. 630 7 Anno. Cas. 20-21. Annotations.

United States: *Dollar Sav Bk. v U. S.* 19 Wall. (U. S.) 227 28 Fed. Cas. No. 16,647;

People v. Ballerino, 99 Cal. 598, 34 Pac. Rep. 330;

Geneva v. Cole, 61 Ill. 397;

Appeal Tax Ct. v. Western Maryland R. Co. 50 Md. 274;

State v. Memphis, etc., R. Co., 14 Lea (Tenn.) 56.

"This rule is based upon the ground that taxes properly levied and assessed create a legal liability against the owner of the property, which may be enforced in an action at law independently of the remedy created by statute."

Winter v. Montgomery, 79 Ala. 481.

In the case of *Greenbaum v. Commonwealth*, 147 Ky. 450, 144 S. W. 45 Am-Eng. Anno. Cas. 1913-D, page 388, the question was raised as to the power of the Commonwealth or the County to impose a personal liability on a non-resident for taxes upon property owned, or in the custody of such non-resident and lying within the County or State imposing the tax. In this case, the defendant was personally served with process while in the State of Kentucky, and the court said:

"The answer does not raise the question of right of jurisdiction over a person in the court trying the case but asserts legal jurisdiction in the taxing power to create or establish any personal liability as the basis for the judgment. It is elementary law that the power of the State as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within the jurisdiction of the taxing powers, unless it be restrained by the provisions of the Federal Constitution."

As was well said by Chief Justice Marshall, in *McCullock v. Maryland*, 4 U. S. L. Ed. 579:

> "It is obvious that it is an incident of sovereignty and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a State extends are subjects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident."

In the case of *Greenbaum v. Commonwealth*, supra, the court stated further:

> "The statute, by its terms, makes it the duty of Greenbaum to pay this tax; and, having voluntarily appeared in the proceedings which lead up to the assessment, and being personally before the court, we are of the opinion that he has had his day in court, and has not been deprived of any of his constitutional rights. The owner having had an opportunity to oppose the assessment, in which he did not only object, but assisted in making, we see no valid reason for making a distinction as to a personal judgment between resident and non-resident only."

See also the case of *Maxwell v. Page*, 23 N. Mex. 356, 168 Pac. 492, 5 A. L. R. 155.

In the case of *Palmer v. McMahon*, 133 U. S. 600, 33 L. Ed. 772, the Court said:

> "The imposition of taxes is in its nature administrative, and not judicial, but assessors exercise quasi-judicial powers in arriving at the val-

ue and opportunity to be heard should be and is given over all such systems of taxation according to value. It is enough, however, if the law provides for a board of revision authorized to hear complaints respecting the justice of the assessments, and prescribes the time which and the place where such complaints may be made."

Citing *Hagar v. Reclamation District*, 111 U. S. 701, 28 L. Ed. 569.

In the case of *Wells Fargo & Company v. Nevada* 63 L. Ed. 190, 248 U. S. 165, the general rule is laid down as follows:

"There is no want of due process of law in a tax assessment because the valuation was made without notice to the taxpayer, or without an opportunity to be heard, where the mode of enforcing the tax is by a judicial proceeding wherein process issues, and an opportunity is afforded for a full hearing, and only after there is a judgment sustaining the tax is payment enforced."

"It is no longer an open question in this state that if a party against whose property an assessment has been made, shall at any time in the course of proceeding before a conclusive judgment, be afforded by law an opportunity to contest its correctness, he is afforded due process of law."

This case seems to cover the question now involved exactly. The taxes which are attempted to be collected are only to be enforced when the judicial proceedings which were instituted in the Chancery Court of Tunica County have been finally disposed of, and the rights of all parties

adjudicated after a full and complete hearing by the court. The defendants have availed themselves of the opportunity to appear and contest each and every issue involved and occupy no different position than that of any other non-resident defendant when brought into court by judicial process, and against whom a judgment is sought or rendered.

Section 3122, Code of 1930, which is identical with Section 6887, Hemingway's Code of 1917, was construed by the Supreme Court of Mississippi in the case of *George County Bridge Company v. Catlett, sheriff and tax collector,* 135 So. 217, where the same question as to due process of law was raised as in the present case, and in passing upon that question, in which the Court said:

> "Appellant contends that the statute violates due process because it fails to provide for personal service of process on the taxpayer giving him notice and an opportunity to be heard at the equalization meeting of the board of supervisors. In considering this question, it should be borne in mind that the assessment of appellant's property was, in every respect, legal. There was no attack made upon it in the court below, nor is there any made in this court. The last clause of the statute provides that, in all actions for the recovery of ad valorem taxes (the kind of taxes here sued for) 'the assessment roll shall only be prima facie correct.' If the law made the assessment roll conclusive as to the amount of taxes due by the taxpayers, the appellant's position would raise a very grave question; but that is not true, the assessment roll is only prima facie correct. That means that the presumption of its correctness is rebuttable. *New Orleans & G. N. R. Co. v. Wal-*

den (Miss.) 133 So. 241. Therefore, when an action is brought for taxes, under this statute, the taxpayer is, of course, summoned into court by process personally served, and there given an opportunity to be fully heard, and on the trial he will be permitted to rebut if he can, the prima facie correctness of the assessment roll."

"The Supreme Court of the United States, in the case of *McMillan v. Anderson*, 95 U. S. 37, 24 L. Ed. 335, held that a statute which gives the taxpayer the right to enjoin the collection of the tax charged against him, and to have the validity of such tax decided by the court, furnishes the taxpayer due process of law, notwithstanding the statute requires that the taxpayer gives security in advance as in other injunction suits."

In the case of *Shaw v. Bill*, 95 U. S. 1, Book 24, L. Ed. page 333, the Supreme Court of the United States in discussing what is due process of law, said:

"The nation from whom we inherited the phrase, 'due process of law' has never relied upon the courts of justice for the collection of her taxes, though she passed through a successful revolution in resistance to unlawful taxation. * * * * It seems to be supposed that it is essential to the validity of this tax that the party charged should have been present, or had an opportunity to be present, in some tribunal when he was assessed. But this is not and never has been considered necessary to the validity of a tax, and the fact that the laws of the states now have boards of revisers of tax assessments does not prove that taxes levied without them are void."

The decision then refers to the fact that under the laws of Louisiana the party could probably sue or recover back taxes illegally paid, or at any rate he could prevent the collection of an illegal tax by injunction, and thereby having a right to be heard in a court of law, was due process under the Constitution.

And in the case of *Davidson v. Board of Administrators*, 96 U. S. 108, 24 L. Ed. 616, the Court said:

> "That, whenever by the laws of the State, or by State authority, a tax assessment, servitude or other burden is imposed upon property for the public use, whether it be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice, to the person, or such proceeding in regard to the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

And in the case of *Den v. Hoboken Land & Improvement Co.*, 90 U. S. 286, 15 L. Ed. 372, the Court said:

> "The words, 'due process of law,' were undoubtedly intended to convey the same meaning as the words 'by the law of the land,' in Magna Charta." * * * *

and in determining what is due process, the Court said:

> "We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions, if not found to be so, we must

look to those settled usages and modes of proceeding existing under the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country. We apprehend that there has been no period, since the establishment of the English monarchy, when there has not been, by the law of the land, a summary method for the recovery of debts due to the Crown, and especially those due from receivers of the revenue."

"It is scarcely necessary to say that this court, when asked to revise proceedings in state courts, have always held that due process of law is afforded litigants if they have an opportunity to be heard at any time before final judgment is entered."

Walker v. Sauvinet, 92 U. S. 90, 23 L. Ed. 678; *Davidson v. New Orleans*, 96 U. S. 97, 24 L. Ed. 616; *Spencer v. Merchant*, 125 U. S. 345, 31 L. Ed. 763; 8 Sup. Ct. Rep. 921; *Gallup v. Schmidt*, 183 U. S. 307, ante 213, 22 Sup. Ct. Rep. 164; *King v. Mullins*, 171 U. S. 404, 43 L. Ed. 214, 18 Sup. Ct. Rep. 925.

Wilson v. Standefer, 184 U. S. 415, 46 L. Ed. 619.

In 6 R. C. L., pages 446, 447, 451 and 452 the general rule as to the essential elements of due process of law are laid down as follows:

"The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the

nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' Somewhat similar is the statement that it is a rule as old as the law that no one shall be personally bound until hehas had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard." * * *

"A party must not be deprived of his property without a judicial hearing, but the stage of proceedings at which that hearing shall take place, and the manner in which the cause of a party shall be brought before the judicial tribunal, provided it is not an unreasonably inconvenient and embarrassing one, are within the legislative power. Due process of law is afforded litigants if they have an opportunity to be heard at any time before final judgment is entered."

In the case of *Wilson v. Standefer*, 184 U. S. 399, 46 L. Ed. 612, the Court said:

"It is scarcely necessary to say that this court, when asked to revise proceedings in state courts, have always held that due process of law is afforded litigants if they have an opportunity to be heard at any time before final judgment is entered."

Walker v. Sauvinet, 92 U. S. 90, 23 L. Ed. 678; *Davidson v. New Orleans*, 96 U. S. 97, 24 L. Ed.

616; *Spencer v. Merchant*, 125 U. S. 345, 31 L. Ed. 763; *Gallup v. Schmidt*, 183 U. S. 307; *King v. Mullins*, 171 U. S. 404, 43 L. Ed. 214.

"One of the fundamental principles underlying due process of law is that no person shall be deprived of his liberty without opportunity at some time to be heard in respect to the matters upon which that liberty depends, in some proceeding appropriate to the nature of the case. This requirement of the constitution is met if the trial is had according to the settled course of judicial proceedings, by a court of justice having jurisdiction either in equity or in common law. Any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves the principles of liberty and justice, is regarded as due process of law. The cases proceed upon the theory that, given a court of justice which has jurisdiction, and acts not artibrarily but in conformity with the general law, upon evidence, and after inquiry made with notice to the parties affected and opportunity to be heard, then all the requirements of due process, so far as it relates to procedure in court and methods of trial and character and effect of evidence, are complied with. The due process clause of the Fourteenth Amendment to the constitution of the United States does not control mere forms of procedure in state courts or regulate practise therein; nor is it designed to reach errors in the administration of the laws not involving jurisdiction of the subject or of the parties."

6 R. C. L., pages 456, 457.

We have devoted some time to the discussion of the question of due process of law raised by the defendants, but do not think that this question is really or properly before the Court inasmuch as no personal judgment against the defendants, or either of them, was prayed for in the original bill, the original bill merely asking that the property seized by writ of attachment, or so much thereof as may be necessary, be sold to satisfy the debt claimed to be due, and inasmuch as under the statute these taxes are a debt that may be recovered in any manner that any other debt due by a resident or non-resident may be collected, and complainant has adopted one of the methods provided by the statute, which method has been recognized and approved by our own Supreme Court, and as said in Griffith's Miss. Chancery Practise, page 515:

> "The Chancery Court shall have jurisdiction of attachment suits based upon demands founded upon any indebtedness, whether the same be legal or equitable; or for the recovery of damages for the breach of any contract, express or implied, or arising ex delicto against any non-resident, absent or absconding debtor, who has lands and tenements within this state, or against any such debtor or persons in this state who have in their hands effect of, or are indebted to, such non-resident, absent or absconding debtor. The court shall give a decree in personam against such non-resident, absent or absconding debtor if summons has been personally served upon him, or if he has entered an appearance."

In the present case the property was brought before the court by writ of attachment and the defendants by filing

an answer entered an appearance, and comes clearly within the rule laid down by said statute, and as set out in Griffith's Chancery Practice, supra.

In the case of *Dollman v. Moore*, 70 Miss. 267, 12 So. 23, it was held that even without the statute, there is jurisdiction in equity to attach the property of a non-resident which cannot be reached by the ordinary process of law. It is charged in the bill and not denied in the answer that in at least one instance the defendants have denuded the land of the valuable timber and permitted same to be sold to the State for taxes, thereby depriving the state, county, and other taxing districts of their just dues, and it is evident that such was the intention in the present case and it is useless to argue that if the lands had been worth more than the taxes assessed against them, that defendants would not have permitted them to be offered for sale for taxes, and that if the State is denied the right prayed for in the original bill that a precedent will be established that any non-resident taxpayer, or resident taxpayer for that matter, can remove property upon which there is a lien for taxes and thereby leave the State, county and other taxing districts with the bag to hold and no means of protecting themselves.

> "It is a fundamental principle of jurisprudence that whoever appeals to a court of equity for relief must do so with clean hands and with an apparently clean conscience. Or, as the maxim has been sometimes very broadly stated 'he that hath committed iniquity shall not have equity.' In the words of Lord Chief Justice Wilmot: 'No polluted hand shall touch the pure foundation of

justice; and those so entering the temple will be expelled with the anathema: 'Procul, O procul esta, profani!' 'Unclean hands,' within the meaning of the maxim of equity, is a figurative description of a class of suitors to whom a court of equity as a court of conscience will not even listen, because the conduct of such suitors is itself unconscionable—i. e., morally reprehensible as to known facts."

Applying this maxim to the present case we see such a close resemblance that we might say that this maxim was based upon the conduct of the defendants in this case. We have these defendants throughout the time the timber was standing on the land, getting the benefit and the protection of the laws of the State of Mississippi, and the very minute that it becomes advantageous they remove the valuable part of their estate, to wit, the timber, upon which there is a lien for taxes, and then say to the State: "We have had your protection in the years gone by, but now it is to our advantage to remove the property upon which there is a lien, and having removed the same without hindrance and having gotten the substance, we leave to you the shadow; collect that which is rightfully due you if you can."

It is said that a court of equity cannot be successfully invoked to assist parties in taking advantage of their own deliberate wrong and wilful misconduct.

As to the right of the attorney general to bring and prosecute this suit, we call the Court's attention to the following authorities:

Chapter 3701, Hemingway's Code of 1927, confers upon the Attorney General common-law powers, said section being as follows:

> "Attorney General and district attorneys to represent tax commission.—1. The attorney general and the several district attorneys are hereby authorized to institute or defend any suits arising out of any act or order of the tax commission or the railroad commission affecting the laws and revenues of the state, and are also clothed with such other authority as is conferred upon them at common law."

Upon that point we submit the following authorities:

> "He was the chief legal adviser of the Crown, and was entrusted with the management of all legal affairs and the prosecution of all suits, civil and criminal in which the Crown was interested. * * * He exercised the right of enforcing public charity, possessed supervisory power over the state of lunatics, and could institute equitable proceeding for the abatement of public nuisances, which affect or endanger the public interposition. Such was the nature of the rights and duties that attached to the position at its inception, it is generally held that, in the exercise of his common law powers, an attorney general may not only control and manage all litigation in behalf of the state, he may also intervene in all suits or proceedings which are of concern to the general public.
>
> "Accordingly, as chief law officer of the state; he may, in the absence of some express legislative restriction to the contrary, exercise all

such power and authority as public interest may, from time to time, require, and may institute, conduct and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order and the protection of public rights." 2 R. C. L. 915.

In 2 R. C. L., page 918, the rule is laid down as follows:

"Obviously there can be no dispute as to the right of an attorney general to represent the state in all litigation of a public character. * * * Moreover, he has authority to prosecute any action maintainable by it. * * * By virtue of his common law powers, however, an attorney general has a right to appear even in private litigation, if it is of such a character as to affect the interest and welfare of the general public.

"IT IS GENERALLY ACKNOWLEDGED THAT THE ATTORNEY GENERAL IS THE PROPER PARTY TO DETERMINE THE NECESSITY OR ADVISABILITY OF UNDERTAKING OR PROSECUTING ACTIONS ON THE PART OF THE STATE. THUS IT HAS BEEN HELD THAT THE DISCRETION OF THE ATTORNEY GENERAL IN DETERMINING WHAT THE PUBLIC INTEREST REQUIRES AS TO BRINGING AN ACTION AGAINST A DOMESTIC BUSINESS CORPORATION, OR ITS OFFICERS, IS ABSOLUTE, AND CANNOT BE MADE THE SUBJECT OF INQUIRY BY THE COURT."

2 R. C. L. 919.

In re *Cooperative Law Company*, 198 N. Y. 479, 92 N. E. 15, 32 L. R. A. (N. S.) 55, the court said:

> "The appearance of the attorney general in this proceeding, pursuant to the notice served on him by order of the Appellate Division, although criticised by the appellant, was entirely proper.
>
> "*For his ancient common law duty to represent the people called upon him to take part in a controversy in which the people are vitally concerned.*"

In the case of *State of Nebraska v. Pacific Express Company*, 115 N. W. 619, 18 L. R. A. (N. S.) 664, the court said:

> "It may be said, further, that, under the provisions of the statute specifying the power and duties of the attorney general, it is the duty of the attorney general to appear for the state and prosecute all actions in the supreme court in which the state shall be interested or a party; and he may, on his own motion, bring and prosecute for the state any suit, matter, or thing, civil or criminal, in which the state is interested, or relating to any matter connected with the executive department. Irrespective of what the powers of the attorney general might have been at common law, as the law officer of the Crown, under this provision, the power and the duty of determining when an action shall be brought by the state, or in the interests of the state in this court, devolve upon the attorney general as fully and to as great an extent as upon the governor or any other officer of the executive department. When, in the exercise of the powers thus conferred upon

him by the Constitution, and the law, the attorney general determines that the interests of the state require an action to be brought in this court, no question can arise as to his authority to institute or maintain the suit, if it is a matter in which the state is interested or relating to the executive department. * * * * This is a well-recognized power and duty of such an officer both in England and in this country."

"The attorney general is a proper party to decide when he shall attend the trial of any party accused of crime, and assist in the prosecution, and that the attorney general or his assistants are the proper parties to decide when it is to the best interest of the state to institute and prosecute any case."

Ex rel, Miller vs. District Court, 19 N. Dak. 819; 124 N. W. 417.

Am.-Eng. Anno. Cas. 1912D, 935.

In the case of *People vs. Ballard,* 134 N. Y. 269, 32 N. E. 54, 17 L. R. A. 737, the court said:

"We think that the question as to what the public interest requires is committed to the absolute discretion of the attorney general, and that it cannot be made the subject of inquiry by the courts. If he abuses the great power entrusted to him, a remedy may be found in his removal from office, or in the election of a successor worthy of the high position."

In the case of *Miller vs. District Court,* supra, the court said:

"The highest courts in New York and Montana hold that the attorney general is the proper

party to determine when the public service requires his taking part in prosecuting actions on the part of the state.

"As the chief law officer of the state, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interest may, from time to time, require. He may institute, conduct and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights.

"The statute under consideration, imposing specific duties upon county attorneys in the matter of its enforcement, is, in no proper view, a limitation upon, nor does it exclude, the general authority of the attorney general upon the same subject. We have numerous instances where particular duties are expressly imposed upon the attorney general, yet it is clear that the attorney general has the right, in virtue of his office, to cooperate with or act independently of that official in all cases where public interests justify it."

State ex rel Young v. Robinson, 101 Minn. 277, 112 N. W. 269; 20 L. R. A. (N. S.) 1127.

And as said by the Supreme Court of Mississippi in the case of *Nickey, et al v. State*, 145 So. 630:

"As we view it, in order to hold that the state had no right to bring this suit, much of what was decided in that case would have to be overruled. We have not a case here where the state has interferred with the collection of these taxes by the tax collector through the statutory scheme. It

was agreed in the record that the tax collector abandoned the statutory scheme, and agreed for the state to bring this suit. The suit is the result of cooperation between the attorney general and the tax collector. It was thought by them that the taxes might be collected by this suit, but probably could not be by the tax collector. This is not a case where the state has pushed the tax collector out of its way, and taken charge of the situation. It is therefore unnecessary to decide in this case how far the state can go in interfering with the tax collectors in the performance of their statutory duty in the collection of taxes. If the state must wait until the tax collectors have exhausted the statutory remedies for the collection of taxes section 3122, declaring taxes a debt for which suit may be brought, would be utterly useless. To illustrate, the tax collector pursued the statutory scheme; the lands of the taxpayers are knocked off to the state for their taxes, costs and damages. The result is that the taxes are paid, and the taxpayer owes no taxes for which suit may be brought."

Appellants not having furnished appellee with a copy of their brief in this case, we have been compelled to prepare this brief without reference to the authorities relied upon by them in support of their contentions in this case.

Respectfully submitted,

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E. C. SHARP,
R. H. KNOX,
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Associate Counsel.

I hereby certify that I have this day mailed, postage prepaid, to Mr. W. E. Gore, of Counsel for Appellant, at Jackson, Mississippi, care of State Tax Commission, a true and correct copy of the above and foregoing brief for Appellees.

This the 2nd day of December, 1933.

E. C. Hart

Associate Counsel.